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**BEFORE THE
RESPIRATORY CARE BOARD
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

In the Matter of the Petition to Revoke Probation
Against:

JAMES E. JOHNSTON
4033 W. 164th Street
Lawndale, California 90260

Respiratory Care Practitioner License No. 22601

Respondent.

Case No. R-2000

**PETITION TO REVOKE
PROBATION**

Complainant alleges:

PARTIES

1. Stephanie Nunez (Complainant) brings this Petition to Revoke Probation solely in her official capacity as the Executive Officer of the Respiratory Care Board of California (Board), Department of Consumer Affairs.

2. On or about October 11, 2002, the Board issued Respiratory Care Practitioner License No. 22601 to James E. Johnston (Respondent). This license expired on June 30, 2005, and has not been renewed.

3. In a disciplinary action entitled "In the Matter of Statement of Issues Against James Edward Johnston," Case No. S-304, the Board issued a decision effective October 11, 2002, in which respondent was issued a probationary license with terms and conditions for a

1 period of three (3) years. A copy of that decision is attached as Exhibit 1 and is incorporated
2 herein by reference.

3 JURISDICTION

4 4. This Petition to Revoke Probation is brought before the Board under the
5 authority of the following laws. All section references are to the Business and Professions Code
6 unless otherwise indicated.

7 5. Section 3710 of the Code states: "The Respiratory Care Board of
8 California, hereafter referred to as the board, shall enforce and administer this chapter [Chapter 8.3,
9 the Respiratory Care Practice Act]."

10 6. Section 3718 of the Code states: "The board shall issue, suspend, and
11 revoke licenses to practice respiratory care as provided in this chapter."

12 7. Section 3754 of the Code states: "The board may deny an application for,
13 or issue with terms and conditions, or suspend or revoke, or impose probationary conditions upon,
14 a license in any decision made after a hearing, as provided in Section 3753."

15 8. Section 118 of the Code states:

16 " . . .

17 "(b) The suspension, expiration, or forfeiture by operation of law of a license
18 issued by a board in the department, or its suspension, forfeiture, or cancellation by order
19 of the board or by order of a court of law, or its surrender without the written consent of
20 the board, shall not, during any period in which it may be renewed, restored, reissued, or
21 reinstated, deprive the board of its authority to institute or continue a disciplinary
22 proceeding against the licensee upon any ground provided by law or to enter an order
23 suspending or revoking the license or otherwise taking disciplinary action against the
24 licensee on any such ground.

25 "(c) As used in this section, 'board' includes an individual who is authorized by
26 any provision of this code to issue, suspend, or revoke a license, and 'license' includes
27 'certificate,' 'registration,' and 'permit.'"
28

1 COST RECOVERY

2 9. Section 3753.5, subdivision (a) of the Code states: "In any order issued in
3 resolution of a disciplinary proceeding before the board, the board or the administrative law judge
4 may direct any practitioner or applicant found to have committed a violation or violations of law to
5 pay to the board a sum not to exceed the costs of the investigation and prosecution of the case."

6 10. Section 3753.7 of the Code provides: "For purposes of the Respiratory Care
7 Practice Act, costs of prosecution shall include attorney general or other prosecuting attorney fees,
8 expert witness fees, and other administrative, filing, and service fees."

9 11. Section 3753.1 of the Code states: "An administrative disciplinary decision
10 imposing terms of probation may include, among other things, a requirement that the licensee-
11 probationer pay the monetary costs associated with monitoring the probation."

12 FIRST CAUSE TO REVOKE PROBATION

13 (Quarterly Reports)

14 12. At all times after the effective date of Respondent's probation, Condition 4
15 stated:

16 "Respondent shall file quarterly reports of compliance under penalty of perjury, on
17 forms to be provided to the probation monitor assigned by the Board. Omission or
18 falsification in any manner of any information on these reports shall constitute a violation of
19 probation, and shall result in the filing of an accusation and/or a petition to revoke
20 probation against Respondent's respiratory care practitioner license.

21 "Quarterly reports will be provided by the Board. Respondent is responsible for
22 contacting the Board to obtain additional forms if needed. Quarterly reports are due for
23 each year of probation and the entire length of probation as follows:

24 "For the period covering January 1st through March 31st, reports are to be
25 completed and submitted between April 1st and April 7th. For the period covering April 1st
26 through June 30th, reports are to be completed and submitted between July 1st and July 7th.
27 For the period covering July 1st through September 30th, reports are to be completed and
28 submitted between October 1st and October 7th. For the period covering October 1st

1 through December 31st, reports are to be completed and submitted between January 1st and
2 January 7th.

3 “Failure to submit complete and timely reports shall constitute a violation of
4 probation.”

5 13. Respondent’s probation is subject to revocation because he failed to comply
6 with Probation Condition 4, referenced above. The facts and circumstances regarding this
7 violation are as follows:

8 Respondent failed to submit his Quarterly Report of Compliance forms for the
9 periods January 1 through March 31, 2005, April 1 through June 30, 2005, and July 1
10 through September 30, 2005.

11 SECOND CAUSE TO REVOKE PROBATION

12 (Probation Monitoring Costs)

13 14. At all times after the effective date of Respondent’s probation, Condition 6
14 stated:

15 “All costs incurred for probation monitoring during the entire probation shall be
16 paid by the Respondent. The monthly cost may be adjusted as expenses are reduced or
17 increased. Respondent’s failure to comply with all terms and conditions may also cause
18 this amount to be increased.

19 “All payments for costs are to be sent directly to the Respiratory Care Board and
20 must be received by the date(s) specified. (Periods of tolling will not toll the probation
21 monitoring costs incurred.)

22 “If Respondent is unable to submit costs for any month, he shall be required instead
23 to submit an explanation of why he is unable to submit the costs, and the date(s) he will be
24 able to submit the costs including payment amount(s). Supporting documentation and
25 evidence of why the Respondent is unable to make such payment(s) must accompany this
26 submission.

27 “Respondent understands that failure to submit costs timely is a violation of
28 probation and submission of evidence demonstrating financial hardship does not preclude

1 the Board from pursuing further disciplinary action. However, Respondent understands
2 providing evidence and supporting documentation of financial hardship may delay further
3 disciplinary action.

4 “In addition to any other disciplinary action taken by the Board, an unrestricted
5 license will not be issued at the end of the probationary period and the respiratory care
6 practitioner license will not be renewed, until such time all probation monitoring costs have
7 been paid.

8 “The filing of bankruptcy by Respondent shall not relieve the Respondent of his
9 responsibility to reimburse the Board for costs incurred.”

10 15. Respondent’s probation is subject to revocation because he failed to comply
11 with Probation Condition 6, referenced above. The facts and circumstances regarding this
12 violation are as follows:

13 Respondent is delinquent in his probation monitoring payments in the amount of
14 \$700.00 for the months of April through October 2005.

15 THIRD CAUSE TO REVOKE PROBATION

16 (Employment Requirement)

17 16. At all times after the effective date of Respondent’s probation, Condition 7
18 stated:

19 “Respondent shall be employed a minimum of 24 hours per week as a respiratory
20 care practitioner for a minimum of 2/3 of his probation period.

21 “Respondent may substitute successful completion of a minimum of thirty (30)
22 additional continuing education hours, beyond that which is required for license renewal,
23 for each 8 months of employment required. Respondent shall submit proof to the Board of
24 successful completion of all continuing education requirements. Respondent is responsible
25 for paying all costs associated with fulfilling this term and condition of probation.”

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27
28 17. Respondent’s probation is subject to revocation because he failed to comply

1 with Probation Condition 7, referenced above. The facts and circumstances regarding this
2 violation are as follows:

3 Respondent has not been employed as a respiratory care practitioner during his
4 probation. He completed 30 additional continuing education hours during his first year of
5 probation, 17 additional continuing education hours during his second year of probation, and has
6 not completed any continuing education hours during his third year of probation.

7 FOURTH CAUSE TO REVOKE PROBATION

8 (Valid License Status)

9 18. At all times after the effective date of Respondent's probation, Condition 12
10 stated:

11 "Respondent shall maintain a current, active and valid license for the length of the
12 probation period. Failure to pay all fees and meet Continuing Education requirements prior
13 to his license expiration date shall constitute a violation of probation."

14 19. Respondent's probation is subject to revocation because he failed to comply
15 with Probation Condition 12, referenced above. The facts and circumstances regarding this
16 violation are as follows:

17 Respondent's license expired on June 30, 2005, and has not been renewed.

18 PRAYER

19 **WHEREFORE**, Complainant requests that a hearing be held on the matters herein
20 alleged, and that following the hearing, the Respiratory Care Board issue a decision:

21 1. Revoking the probation that was granted by the Respiratory Care Board of
22 California in Case No. S-304;

23 2. Revoking or suspending Respiratory Care Practitioner License No. 22601
24 issued to James E. Johnston;

25 3. Ordering James E. Johnston to pay the Respiratory Care Board the costs of
26 the investigation and enforcement of this case, and if probation is continued or extended, the costs
27 of probation monitoring;

28 4. Taking such other and further action as deemed necessary and proper.

1 DATED: October 7, 2005

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Original signed by Colleen Whitestine for:

STEPHANIE NUNEZ

Executive Officer

Respiratory Care Board of California

Department of Consumer Affairs

State of California

Complainant